

app 3/13/78

Synopsis of Federal Trade Commission Decisions
Which Are Relevant to Automobile Rental Practices

1. The Federal Trade Commission has determined that it is an unfair or deceptive practice, in advertising or contracting for the rental of cars, for the rentor to fail to accentuate in the same degree every term of a car rental offer or contract, so that no charge or condition relating to a rental may be reasonably overlooked. 1/

In particular, where specific price terms are mentioned in an advertisement, the advertisement must note, in equally conspicuous fashion, all other rental charges which the consumer may be required to pay, to ensure that the consumer will not be deceived by the advertisement as to the costs of renting the car.

2. The Federal Trade Commission has determined that "bait and switch" practices are unfair or deceptive practices and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act. "Bait and switch" is the advertising of a product without the bonafide intention to sell it, for the purpose of establishing contact with a prospective customer in order to induce or "switch" him to the purchase of another product. This is achieved through a variety of practices designed to discourage the sale of the advertised product at the advertised price. 2/

-- It is an unfair or deceptive practice to disparage an advertised product for the purpose of "switching" a customer to the purchase of another product. 3/

1/ Opinion of the Commission in Resort Car Rental System, Inc., 83 F.T.C. 234, 300-301 (1973), affirmed, 518 F.2d 962 (9th Cir. 1975).

2/ Opinions of the Commission in Leon A. Tashof d/b/a New York Jewelry Company, 74 F.T.C. 1361 (1968), affirmed, 437 F.2d 707 (D.C. Cir. 1970); Steven Rizzi, t/a Freight Liquidators, 85 F.T.C. 274 (1975).

3/ Opinions of the Commission in Aluminum Industries, Inc. d/b/a Southern Patio Co., Inc., 67 F.T.C. 1, 7, 9 (1965); Wilbanks Carpet Specialists, Inc., 84 F.T.C. 510, 533 (1974); Southern States Distributing Co., 83 F.T.C. 1126, 1162 (1973); Seekonk Freezer Meats, Inc., 82 F.T.C. 1025, 1055-1056 (1973); Lawrence TV Corp., 73 F.T.C. 687, 695 (1968).

-- It is an unfair or deceptive practice to advertise a product whose actual appearance or performance discourages its purchase because such product's appearance or performance is below the quality implied or represented in the advertising. 4/

-- It is an unfair or deceptive practice to "switch" a customer to a higher priced product by refusing to show or to sell the advertised product. 5/

-- It is an unfair or deceptive practice to "switch" a customer by claiming that the advertised product is unavailable or by failing to have the advertised product available in reasonable quantity. 6/

-- It is an unfair or deceptive practice to "switch" a customer by refusing to take orders for delivery or failing to make delivery, if an order is taken, within a reasonable period of time. 7/

4/ Opinions of the Commission in Charles A. Olson d/b/a Consolidated Sewing Machine Co., 71 F.T.C. 356, 371, 374 (1967); James R. Boarman t/a R&B Sewing Machine & Vacuum Cleaner Co., 70 F.T.C. 1463 (1966); Consumers Products of America, Inc., 72 F.T.C. 533, 542 (1967), affirmed, 400 F.2d 930 (3d Cir. 1968), cert. denied, 393 U.S. 1088; Seekonk Freezer Meats, supra, note 3, 82 F.T.C. at pp. 1037-38; Tri-State Carpets, Inc., 84 F.T.C. 1078 (1974); Wilbanks Carpet Specialists, Inc., supra, note 3, 84 F.T.C. at p. 520.

5/ Opinions of the Commission in Barbara E. Martin d/b/a Household Sewing Machine Co., 52 F.T.C. 250, 264 (1955); Lifetime, Inc., 59 F.T.C. 1231 (1961).

6/ Opinions of the Commission in Better Living, Inc., 54 F.T.C. 648, 651 (1957), affirmed, 259 F.2d 271 (3d Cir. 1958); Lifetime, Inc., supra, note 5; Holiday Carpets, Inc., 76 F.T.C. 673, 684 (1969).

7/ Opinions of the Commission in Southern States Distributing Co., supra, note 3, 83 F.T.C. at p. 1140; Royal Construction Co., 71 F.T.C. 762, 780 (1967).

The existence of bait and switch schemes may also be evidenced by the following factors: whether in fact there were a significant number of sales of the advertised product at the advertised price; 8/ whether salesmen received commissions on the sale of the advertised product, or whether their commissions on such product were lower than for other products 9/ or whether there were large advertising expenditures for a product whose sales were minimal. 10/

3. It is an unfair and deceptive practice to furnish to others the means or instrumentalities with which to engage in the unfair or deceptive practices described in the preceding paragraphs. 11/

8/ Opinions of the Commission in Leon A. Tashof, supra, note 2; Southern States Distributing Co., supra, note 3; Wilbanks Carpet Specialists, Inc., supra, note 3, 84 F.T.C. at p. 520.

9/ Opinions of the Commission in Commission in Consumers Products of America, Inc., supra, note 4, 72 F.T.C. at p. 560; Wilbanks Carpet Specialists, Inc., supra, note 3, 84 F.T.C. at p. 520.

10/ Opinion of the Commission in Southern States Distributing Co., supra, note 3.

11/ Opinions of the Commission in C. Howard Hunt Pen Co, 47 F.T.C. 1171, 1181-2 (1951), affirmed, 197 F.2d 273 (3d Cir. 1952); F.T.C. v. Winstead Hosiery Co., 3 F.T.C. 189 (1921), reversed, 272 F. 957 (2nd Cir. 1921), Commission decision affirmed, 258 U.S. 483 (1922).